

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA,

ALAMAR CYRIL HOUSTON,

Plaintiff,

No. CIV-S-03-1107 LKK KJM P

vs.

E. ROGERS, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

Plaintiff is a California detainee proceeding pro se with an action under 42 U.S.C. § 1983. His case is going forward on those claims in his amended complaint that allege excessive force and failure to protect under the Eighth Amendment. On October 31, 2005, defendants filed a motion to stay this action because plaintiff has been found “incapable of cooperating with counsel in the conduct of his defense [in a pending criminal matter in Solano County] and of understanding the nature and purpose of [those] proceedings.” October 31, 2005 Decl. of Alvin Gittisriboongul, Ex. A. Plaintiff filed an opposition to the motion that, generally speaking, is not responsive.

Under Federal Rule of Civil Procedure 17(c), the court has the authority to appoint a guardian ad litem for a person deemed to be incompetent or make any other order the court deems proper for the protection of the incompetent person. Where the court does not

1 appoint a guardian ad litem for a person found to be incompetent, the court must make a specific
2 determination that the incompetent person's interests are otherwise adequately protected. United
3 States v. 30.64 Acres of Land, 795 F.2d 796, 805 (9th Cir. 1986).

4 After reviewing the papers submitted and the file in this case, the court finds good
5 cause to recommend that this matter be stayed, and that the parties be ordered to submit status
6 reports within six months informing the court whether plaintiff has been found competent to
7 stand trial in his pending Solano County matter and whether plaintiff is ready to proceed in this
8 matter. The court finds that plaintiff's interests will be adequately protected by such a stay. All
9 of the defendants have appeared in this action so a delay will not affect whether the court obtains
10 jurisdiction over a particular defendant. Also, it does not appear from plaintiff's complaint,
11 defendants' answer, or anything else in the court's file that plaintiff's case will be prejudiced by a
12 six month stay.

13 In accordance with the above, IT IS HEREBY RECOMMENDED that:

- 14 1. Defendants' October 31, 2005 motion for stay be granted;
15 2. This matter be stayed;
16 3. Within six months from the adoption of the above findings and
17 recommendations, or upon plaintiff's restoration of competency, whichever is sooner, the parties
18 be directed to file status reports informing the court whether criminal proceedings in Solano
19 County case number FCR223595 have recommenced and whether plaintiff is ready to proceed in
20 this matter; and
21 4. The Clerk of the Court be directed to administratively close this case.

22 DATED: June 1, 2006.

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25 UNITED STATES MAGISTRATE JUDGE
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